

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING

RULEMAKING ACTION:

Notice of proposed **PERMANENT** rulemaking.

PROPOSED RULES:

Chapter 90. Withholding [AMENDED]

SUMMARY:

The proposed amendment to Section 710:90-1-13 incorporates new Tax Commission withholding Form OK-W-4-R in response to the new IRS Form W-4R. New Form OK-W-4-R is to be used for nonperiodic and rollover distributions. [68:2385.1 et seq]

Other sections may be amended to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update or correct citations, update contact information, and ensure accurate internal cross-references, which do not change the interpretation or intent of the rules.

AUTHORITY:

68 O.S. §§ 203 and 2385.15; Oklahoma Tax Commission

COMMENT PERIOD:

Persons wishing to present their views in writing may do so by 4:30 p.m., February 7, 2023, at the following address: Oklahoma Tax Commission, Tax Policy and Research Division, Oklahoma City, Oklahoma 73194, Attention: Lisa Haws, or by email to lhaws@tax.ok.gov.

PUBLIC HEARING:

A public hearing is scheduled for 1:30 p.m., on Wednesday, February 8, 2023, at the Oklahoma Tax Commission, 123 Robert S. Kerr Ave, Oklahoma City, Oklahoma. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date by calling Lakesha Mackie at (405) 521-3133. Time limitations may be imposed on oral presentations to ensure that all persons who have filed written requests for placement on the docket will have an opportunity to speak.

In order to facilitate entry into the building, those wishing to appear should contact Lakesha Mackie at (405) 521-3133 at least 24 hours prior to the hearing date to complete their visitor pre-registration. In order to gain access to the hearing, attendees must register at the information desk in the lobby by presenting a driver license or other photo identification.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Although nothing in this rulemaking action has been determined to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that, pursuant to 75 O.S. § 303(B)(6), business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed Rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the below listed contact person. The proposed rules may also be viewed on the agency's website at <http://www.tax.ok.gov>.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available from the below listed contact person. The Rule Impact Statement may also be viewed on the agency's website at <http://www.tax.ok.gov>.

CONTACT PERSON:

Lisa R. Haws, Agency Liaison, Tax Policy Division, Oklahoma Tax Commission, Oklahoma City, Oklahoma 73194. Telephone number: 405-521-3133; Email: lhaws@tax.ok.gov

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING
SUBCHAPTER 1. GENERAL PROVISIONS

710:90-1-13. Pensions, annuities, and certain other deferred income

(a) **Treatment of designated distributions.** Designated distributions, as defined by the Internal Revenue Code (IRC), Section 3405, whether periodic or non-periodic, ~~should be treated as if they were a payment of wages for~~ may be subject to Oklahoma Income Tax Withholding purposes income tax withholding. ~~The payor of any periodic or non-periodic payment should inform recipients who are or become Oklahoma residents of the need to withhold. if:~~

- ~~(1) The recipient has not chosen the election of "no federal withholding," provided by Section 3405 of the Internal Revenue Code, or~~
- ~~(2) The recipient elects to have Oklahoma Income Tax withheld irrespective of any election to not withhold federal income tax.~~

(b) **Treatment of periodic payments.** The amount to be withheld from a periodic payment is determined as if it were a payment of wages. The marital status and number of withholding allowances ~~an employee~~ a recipient may claim in determining the tax to be withheld shall be ~~the same as that~~ claimed on Form ~~W-4P~~ OK-W-4-P, Withholding Certificate for Pension or Annuity Payments, ~~or a similar form provided by the payer.~~

(1) If the recipient has not provided a withholding certificate, tax will be withheld as if the recipient were married and claiming three (3) withholding allowances.

(2) The recipient can choose not to have tax withheld, regardless of how much tax is owed for the previous year, or is expected to be owed in the current year.

(c) **Treatment of non-periodic payments.** Tax will be withheld at ~~a five percent (5%)~~ the top marginal individual income tax rate on any non-periodic payments.

(1) The recipient ~~cannot~~ must use Form ~~W-4P~~ OK-W-4-R, Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions to determine whether income tax will ~~the amount to be withheld, since withholding allowances or marital status are not taken into consideration.~~

(2) ~~The recipient can use Form W-4P to specify an additional amount to be withheld.~~

~~(3) The recipient can also use Form W-4P~~ OK-W-4-R, to choose not to have tax withheld.

(d) **Employer contributions.** Employer contributions to qualified cash or deferred arrangements are not subject to Oklahoma ~~Withholding Tax~~ withholding tax.

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING**

RULE IMPACT STATEMENT

Pursuant to 75 O.S. §303(D), the Oklahoma Tax Commission provides the following rule impact statement with regard to proposed rule changes to Chapter 90 of Title 710 of the Oklahoma Administrative Code.

DESCRIPTION: The proposed amendment to Section 710:90-1-13 incorporates new Tax Commission withholding Form OK-W-4-R in response to the new IRS Form W-4R. New Form OK-W-4-R is to be used for nonperiodic and rollover distributions. [68:2385.1 et seq]

CLASSES AFFECTED: Payors and recipients of any periodic or non-periodic payments may be affected by the proposed changes.

PERSONS BENEFITED: The classes affected by the proposed changes will benefit from the proposed amendments.

PROBABLE ECONOMIC IMPACT OF THE PROPOSED RULE UPON AFFECTED CLASSES OF PERSONS OR POLITICAL SUBDIVISIONS: There are no anticipated increase to costs associated with the proposed rule changes.

LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE: The rulemaking action does not levy, implement, or increase an existing fee.

PROBABLE COSTS TO THE AGENCY: Costs to promulgate and enforce the proposed rules will be funded through normal agency budget. No measurable impact on State revenues is anticipated.

ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS: The agency does not anticipate any economic impact on any political subdivision to implement the proposed rule changes at this time.

SMALL BUSINESS IMPACT: After consideration with reference to Section 303(A)(4) and 303(B)(6) of Title 75, it is believed that the proposed rules will have no adverse impact upon Small Business.

ALTERNATIVE METHODS AND COSTS OF COMPLIANCE: There are no less costly or non-regulatory methods or less intrusive methods for achieving the purpose of this proposed rules. No formalized compliance cost minimization measures have been pursued.

DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT: The agency does not anticipate any impact on public health, safety, or environment as a result of implementation of the proposed rules at this time.

DETERMINATION OF THE DETRIMENTAL EFFECT WILL THERE BE ON THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT IF THE RULE CHANGE IS NOT IMPLEMENTED: The agency does not anticipate any detrimental effect on public health, safety, or environment as a result of failure to implement the proposed rules at this time.

DATE PREPARED: December 13, 2022